

Agenda Date: January 23, 2020  
Item Numbers: A2

**Docket:** UE-190666  
**Company:** Pacific Power & Light Company

**Staff:** Kyle Frankiewicz, Regulatory Analyst

### **Recommendation**

Staff recommends that the commission issue an order rejecting Schedule QF filed by Pacific Power & Light Company, and directing the utility to file a tariff consistent with the Public Utility Regulatory Policies Act, the commission's Chapter 480-106 WAC and General Order R-597, with the specific details as follows:

1. *Gas Peaker Proxy – no adjustments to fixed costs:* Remove the proposed adjustments, such as the 2-in-12 month adjustment or the capitalized energy cost adjustment, from the peaker proxy methodology used to determine the avoided cost of capacity for the years in which Pacific Power & Light Company plans to meet its capacity needs through market purchases not yet executed.
2. *Gas Peaker Proxy – use proxy from 2020 through 2027:* Determine the avoided cost of capacity using the peaker proxy through 2027, when the 2017 IRP selects the company's next planned capacity resource in the western side of its system.
3. *Non-wind, non-solar QFs – clarification of tariff offerings:* Clarify the capacity rate offered to QF resources that do not receive a rate calculation specific to their fuel type.
4. *Next Planned Capacity Addition – no capitalized energy cost adjustment:* Remove the capitalized energy cost adjustment from the calculation of capacity value for the solar resource selected in the company's 2017 IRP, which should be used to determine the avoided cost of capacity starting in 2028.
5. *Large QF Avoided Cost Methodology – separate filing:* Remove descriptions of the utility's non-standard and large QF avoided cost methodology from tariff, and file a petition for approval of the company's avoided cost rate methodology for large QFs as required in WAC 480-106-050(5) and as described in WAC 480-07-370(3) under a separate docket.
6. *Contracting Process and Timeline – remove interconnection study requirement in tariff:* Remove from Schedule QF's contracting procedures the requirement that a QF must provide an interconnection study prior to receiving a contract.
7. *Contracting Process and Timeline – no “proposed final version” and defined timelines:* In the contracting procedures section of Schedule QF, remove the “proposed final version” step (step 4 at QF.4 and QF.6) or combine with the preceding “draft” step, with clear language in the company's contracting procedures stating the number of days by which a party must respond.
8. *Contracting Process and Timeline – extend 15-day signing window for final PPA:* Revise Schedule QF to allow 45 days for a QF to sign an executable final PPA.
9. *Contracting Process and Timeline – remove 90 days' notice before complaint to WUTC:* Remove the requirement that QFs give Pacific Power & Light Company 90 days' notice

before filing a complaint with the commission or petitioning the commission to resolve an irreconcilable agreement.

*Waiver for use of data from Request for Proposals:* Staff also recommends that the commission waive WAC 480-106-040(1)(b)(i) and direct Pacific Power & Light Company to calculate the avoided cost of capacity starting in 2028 based on the company's 2017 Oregon solar RFP results, using the adjustment method from the 2017 IRP and current information to adjust for inflation, expiring tax credits, and price changes due to technological progress and market trends through the 20-year window required under WAC 480-106-040(1)(b).

*Additional time for review of standard Power Purchase Agreements:* Finally, staff recommends that the commission require the company to file a tariff revision that addresses the above items by February 28, 2020, and file standard power purchase agreements as an attachment to this tariff by May 29, 2020.

## **Background**

On June 12, 2019, the Washington Utilities and Transportation Commission (commission) concluded its rulemaking under Docket U-161024 with an order amending, adopting, and repealing parts of the Washington Administrative Code (WAC). Among other changes, the commission added a new Chapter 480-106 WAC revamping the implementation of the Public Utility Regulatory Policies Act (PURPA), which requires utilities to purchase energy and capacity from small power producers, also called qualifying facilities (QFs). The three electric utilities regulated by the commission filed tariff revisions updating their tariffs to implement the requirements of the new rules on August 9, 2019. Discussions with the utilities and interested stakeholders prompted commission staff (staff) to bring these tariff revisions to the open meeting on September 12, 2019, for commission discussion and stakeholder input.

During and after the September 12 open meeting, Pacific Power & Light Company (Pacific Power), interested stakeholders and staff agreed to build a record to better explain the many components of the proposed tariff. Pacific Power agreed to provide a more robust filing supporting the company's proposed tariff, and agreed with the Northwest and Intermountain Power Producers Coalition (NIPPC) and the Renewable Energy Coalition (REC) to a timeline for filing comments and responses to this docket. A list of comments from all parties in this docket is attached to this memo as Attachment A.

## **Discussion**

Each investor-owned utility filed tariff revisions in response to the commission's General Order R-597, which adopted the finalized rules implementing PURPA after a lengthy rulemaking process.<sup>1</sup> This memo describes how, in staff's opinion, some components of Pacific Power's compliance filing do not comply with PURPA, Chapter 480-106 WAC and General Order R-597.

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<sup>1</sup> Docket U-161024.

Pacific Power submitted this compliance filing on August 9, 2019, starting this docket over five months ago. During this period, Pacific Power has engaged in conversation with staff and with interested third parties. Pacific Power has not made any substantive revisions to its original filing in response to staff or stakeholder feedback during this period. Staff remains unconvinced by the company's contentions that Schedule QF's terms and avoided cost rate calculations comply with the order, the new rule or with PURPA. The company has shown little willingness to alter its filing absent explicit commission direction – indeed, even after explicit commission direction.

Fundamentally, this tariff revision is a compliance filing that does not do what the commission has required the utility to do; it does not comply with the commission's direction. Staff is therefore recommending that it be rejected, and that the commission direct the company to address the myriad components that do not align with the commission's rules and order.

*Gas Peaker Proxy – no adjustments to fixed costs*

Pacific Power's tariff does not implement the plain meaning of WAC 480-106-040(b). The rule states that a utility "must identify the projected fixed costs of its next planned capacity addition based on either estimates included in its most recently acknowledged integrated resource plan or the most recent project proposals received pursuant to an RFP (request for proposals) issued consistent with chapter 480-107 WAC, whichever is most recent."

The avoided cost rates in Pacific Power's proposed Schedule QF are based on the fixed costs of a gas peaker plant for only two of the twelve months in a year. In its November 18, 2019, filing, the company explores an alternative proposal which would net out a few varieties of benefits that, the company contends, would manifest if the company were to own and operate a simple-cycle gas generator. Neither of these adjustments align with a plain reading of the WAC, nor with General Order R-597.

The rule does not afford latitude for significant adjustments to these projected fixed costs. When the commission was considering this rule language, Pacific Power proposed using net costs of capacity, but the commission decided against the company's proposal.<sup>2</sup> Using two months of capacity costs rather than the full fixed costs of a gas peaker is similarly inappropriate. The company's contention that PURPA rates should allow the company to pay for fixed costs only in months where capacity is needed is nonsensical and unbalanced; Pacific Power owns many assets which are not used every day or month, yet customers' rates include the full fixed costs of these assets.

Pacific Power has fought to reduce its avoided cost of capacity for PURPA purposes in this fashion before, and was unsuccessful. In UE-144160, the commission found that the company's

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<sup>2</sup> Docket U-161024, General Order R-597, p. 4, ¶ 13 (June 12, 2019) (explaining that staff's recommendations for rejecting or accepting suggested changes to the proposed rules were included in Appendix A, agreeing with staff's recommendations, and adopting staff's recommendations). Discussion of Pacific Power's proposal to use net capacity costs is on page 23 as part of Appendix A.

proposal to eliminate the separate capacity component of its PURPA rates failed to produce rates that were fair, just, reasonable, and sufficient.<sup>3</sup> This issue was identified and discussed during the rulemaking,<sup>4</sup> and resulted in unambiguous rule language requiring “the projected fixed costs of its next planned capacity addition.” The company continues to propose this downward adjustment as if the new rule language provides no clarity, but in staff’s view, the issue is settled, and the commission has made itself clear. NIPPC/REC and staff agree that the commission should direct Pacific Power to remove these adjustments.

*Gas Peaker Proxy – use proxy from 2020 through 2027*

In Pacific Power’s 2017 IRP, the first selected resource in the western side of the company’s system is an eleven MW solar facility around Yakima, selected in 2028. From 2020-2027, the company’s IRP “identifies the need for capacity in the form of market purchases not yet executed.” Per WAC 480-106-040(1)(b)(ii), the company “shall use the projected fixed costs of a simple-cycle combustion turbine unit as identified in the integrated resource plan as the avoided capacity cost of the market purchases.”

Instead, Pacific Power uses the gas peaker proxy for only 2020, and presents the projected 2021 online date of a recently-acquired Oregon solar project as its “next planned capacity resource identified in the succeeding twenty years in the utility’s most recently acknowledged integrated resource plan.” This runs counter to the plain reading of WAC 480-106-040(1)(b). Pacific Power has not explained how using the acquired solar project aligns with the rule’s requirement to use the next planned capacity resource in the company’s most recently acknowledged IRP. Staff recommends the commission direct the company to use the correct proxy resource for the 2020-2027 period.

*Capacity Contribution non-wind, non-solar QFs*

Pacific Power’s tariff provides rates for wind, fixed solar, tracking solar and baseload. In comments targeted at Avista Corporation but filed to this docket as well, NIPPC/REC recommend that utilities clarify how non-wind, non-solar resources will be treated under their tariffs. Staff concurs. Staff understands Pacific Power’s tariff to offer any non-wind, non-solar QF the remaining rate in tariff – the baseload rate – but believes the tariff language would benefit from more clarity. Staff recommends the commission direct Pacific Power to revise its Schedule QF to clarify the capacity rate offered to QF resources that do not receive a rate calculation specific to their fuel types. Staff agrees broadly with NIPPC/REC’s suggestion that non-wind, non-solar resources be treated as baseload resources with a 100 percent capacity contribution,<sup>5</sup> but would likely support inclusion of additional rates with varying capacity contributions for other resource types consistent with WAC 480-106-040(2), especially when analysis supporting this differentiation is contained in the utility’s most recently acknowledged IRP.

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<sup>3</sup> *Wash. Utils. & Transp. Comm’n v. Pacific Power and Light Co.*, Docket UE-144160, Order 04, pp. 8-11. ¶¶ 20-23; p.15, ¶34 (Nov. 12, 2015).

<sup>4</sup> Docket U-161024, Notice of Workshop and Notice of Opportunity to File Written Comments, pp. 2-3, (March 20, 2017).

<sup>5</sup> Docket UE-190666, NIPPC/REC comments, November 14, 2019, page 8.

*Next Planned Capacity Addition – no capitalized energy cost adjustment*

As discussed above, chapter 480-106 WAC requires utilities to calculate avoided cost rates based on the fixed costs of capacity, not on net costs of capacity. Staff believes the WAC is clear, and that the commission clearly indicated its preferred policy direction. Staff recommends the commission direct the company to revise its rates accordingly.

*Large QF Avoided Cost Methodology – separate filing*

This is an administrative matter. Pacific Power initially included this methodology in its August 9, 2019, cover letter. On November 18, 2019, the utility revised its proposed tariff to include the methodology as a part of its Schedule QF.

Since this revision, staff has reached an understanding on the optimal procedural route to comply with WAC 480-107-050(5). All utilities, including Pacific Power, should file their petitions pursuant to WAC 480-07-370(3) for approval of large QF avoided cost methodology.<sup>6</sup> The methodology presented in the petition should be detailed enough to avoid any misunderstandings between utility and large QF when applying the methodology, and should stand alone as a static methodology that can only be deviated from with mutual agreement of the parties, and can only be revised through another petition by the utility.

*Contracting Process and Timeline – remove interconnection study requirement in tariff*

Pacific Power requires that QFs seeking a finalized PPA “must provide the Company with any additional or clarifying project information that the Company reasonably determines to be necessary for the preparation of a proposed final version of the PPA,” which may include “evidence that any necessary interconnection studies . . . have been completed supporting the requested commercial operation date for the project.”<sup>7</sup> NIPPC/REC argue that this requirement is inconsistent with PURPA. The joint parties highlight that, depending on Pacific Power’s interconnection queue reform effort, this requirement could set up a catch-22, where a QF must have an executed PPA before it can get into the interconnection queue, but must have a completed interconnection study before it can get a PURPA PPA.

Staff concurs with NIPPC/REC’s recommendation to adopt the Oregon Public Utility Commission’s (OPUC) handling of Pacific Power’s interconnection issues within PURPA. OPUC ruled that “the requirement of a completed interconnection study should be removed” from Pacific Power’s Oregon PURPA tariff.<sup>8</sup> Issues around missing a targeted commercial operation date, and what types of delays prompt what types of recourse, may be addressed within the terms and conditions of the PPA.

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<sup>6</sup> Puget Sound Energy (PSE) was the first to file a petition for approval of its large QF avoided cost methodology under docket UE-191062. PSE filed a petition for a declaratory order, pursuant to WAC 480-07-930(1). Staff has requested that they withdraw that petition, and instead ask for a petition for approval pursuant to WAC 480-07-370(3).

<sup>7</sup> Docket UE-190666, Proposed Schedule QF, p. QF.4 (October 24, 2019).

<sup>8</sup> *In re Pub. Utils. Comm’n of Oregon Staff’s Investigation Relating to Elec. Utils. Purchases from Qualifying Facilities*, Docket UM-1129, Order 07-360, p. 7-8 (August 20, 2007). Available at <https://apps.puc.state.or.us/orders/2007ords/07-360.pdf>

*Contracting Process and Timeline – remove “proposed final version” step, and define timelines*  
Staff also concurs with NIPPC/REC’s contention that the company’s contracting procedures include a “proposed final version” step that adds no value and unnecessarily lengthens the timeline. To the extent the details that Pacific Power may request under this step are necessary to create a final contract, those details could be instead required in step 2. Staff agrees with NIPCC/REC’s observation that the utility’s contracting procedures do not consistently specify a timeline for response. For example, in step 4, Pacific Power does not specify how many days the company has to request additional information, nor does it specify how many days a QF has to respond to the company’s request. Staff recommends either removing step 4 as its own step or combining it with the “draft” PPA step. Staff also recommends requiring Pacific Power to include specific timelines for all steps within its contracting procedures.

*Contracting Process and Timeline – extend 15-day signing window for final PPA*  
Pacific Power’s step 6 in its contracting procedures provides that “the Company will prepare and deliver to the Seller [QF] within fifteen (15) business days a final executable version of the PPA. If Seller executes and returns the partially executed PPA to Company within fifteen (15) business days, the Company will countersign the PPA and return a fully executed PPA to Seller.”

Staff agrees with NIPPC/REC’s request to extend the 15-day signing window to 45 days. NIPPC/REC point out that Puget Sound Energy’s (PSE) contracting procedures provide 45 days for QFs to sign,<sup>9</sup> and that some entities pursuing a QF arrangement may have monthly legal or management review cycles. Staff believes adjusting this window to 45 days is a simple way to maintain consistency across Washington utilities, one of staff’s goals throughout this PURPA implementation process.

*Contracting Process and Timeline – remove 90 days’ notice before complaint to WUTC*  
Pacific Power’s Schedule QF, sheet QF.9 requires 90 days’ prior notice to the utility before a QF may petition the commission for resolution of any unresolved dispute or irreconcilable disagreement. WAC 480-106-030(2)(b) states in part, “If an irreconcilable disagreement arises during the contracting process, the qualifying facility or the purchasing utility may petition the commission to resolve the disagreement [...]”

Chapter 480-106 WAC does not require a QF to give notice to a utility prior to petitioning the commission to resolve contracting disputes. Staff understands that the petition process in chapter 480-106 WAC refers to WAC 480-07-370(3), which similarly does not require notice from one party to another prior to filing a petition. Staff agrees with Pacific Power that “[a]llowing an opportunity for informal dispute resolution with more senior members of each organization before the filing of formal complaints should be encouraged by the Commission.”<sup>10</sup> This is a great idea, and one that can be pursued without a notice period that limits a party’s rights.

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<sup>9</sup> PSE’s Tariff WN U-60, Schedule 91, Original Sheet No. 91.K, effective December 7, 2019.

<sup>10</sup> Docket UE-190666, PacifiCorp’s Reply Comments to Supplemental Filing, December 23, 2019, page 11.

*Waiver for use of data from 2017 Oregon Solar Request for Proposals (RFP)*

WAC 480-106-040(1)(b)(i) requires utilities to calculate avoided cost of capacity “based on either the estimates included in its most recently acknowledged integrated resource plan or the most recent project proposals received pursuant to an RFP issued consistent with chapter 480-107 WAC, whichever is most current[.]” Pacific Power’s avoided cost rates are based on the results of an RFP for solar resources in Oregon issued in 2017. NIPPC/REC request that Pacific Power use its 2017 IRP as the source for calculations of the avoided costs of capacity.

Pacific Power’s use of these cost inputs does not follow the WAC, as this RFP was not issued “consistent with chapter 480-107 WAC.” Nonetheless, staff agrees with the utility that the RFP data is a more accurate reflection of the current market than the vetted assumptions contained in the 2017 IRP. Staff therefore recommends granting a waiver of this rule to allow the company to use this cost information. Staff recommends that changes in year-to-year capacity pricing account for tax credits, inflation, and price changes due to technological progress and market trends, and that those adjustments align with the assumptions made in the 2017 IRP and with the status of any tax credits at the time of filing.

*Additional time for review of standard Power Purchase Agreements*

Though Pacific Power’s form PPA was filed over five months ago, staff understands that the company and interested stakeholders have not yet started negotiations over the PPA terms and conditions. At the September 12, 2019, open meeting, representatives from NIPPC/REC proposed addressing avoided costs and tariff language first, then negotiating and finalizing the PPA later. NIPPC/REC have included this request in most of their joint comments since.<sup>11</sup> Staff agrees that more time, and a period of time dedicated solely to PPA issues, will lead to a more polished standard PPA.

If adopted, staff’s recommendation would create two future compliance filings for Pacific Power. The avoided costs rates and tariff language must be filed by February 28, 2020, and the PPA(s) must be filed as attachments to the tariff by May 29, 2020. This should allow time for discussion of terms, and for creating a form PPA that can be flexible enough to handle almost all QF types – a concern raised by NIPPC/REC in their request for more and clearer contract options.<sup>12</sup> Staff is recommending similar treatment for PPAs attached to Avista Corporation’s PURPA tariff.<sup>13, 14</sup>

Staff hesitates to recommend this as part of the order without broader discussion with Avista and stakeholders, but offers a standard PPA structure which may lead to a standard PPA that would provide additional clarity and flexibility to all parties. Staff proposes three separate PPAs: one

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<sup>11</sup> Docket UE-190666, Comments on behalf of NIPPC and REC, November 15, 2019, page 12; December 9, 2019, page 18; January 6, 2020, page 4.

<sup>12</sup> Docket UE-190666, Comments on behalf of NIPPC and REC, December 9, 2019, page 15.

<sup>13</sup> Docket UE-190663.

<sup>14</sup> Docket UE-190665; PSE’s attachments to the company’s small QF tariff, Schedule 91, went into effect on December 6, 2019. PSE and interested stakeholders were able to find agreement with PSE’s PPAs, so staff had no reason to propose an alternative.

for new QFs, one for existing QFs, and one for QFs that do not meet the state's greenhouse gas emissions performance standards under RCW 80.80.040. The PPAs will address the differing terms required pursuant to WAC 480-106-050(4).

Further, staff proposes that these PPAs include various exhibits to address differentiation based on the supply characteristics of different technologies. QFs of different types would identify the exhibit or exhibits that apply to their prospective projects.

- Exhibit A: project details and PPA terms specific to baseload QFs and QFs without a calculated and substantiated capacity valuation, such as biomass and small hydro.
- Exhibit B: project details and PPA terms specific to fixed solar.
- Exhibit C: project details and PPA terms specific to tracking solar.
- Exhibit D: project details and PPA terms specific to wind.
- Exhibit E: project details and PPA terms specific to QFs pairing generation with energy storage, and describing capacity valuation adjustments based the project's specific details.

### **Stakeholder comments**

A list of comments from all parties in this docket is attached to this memo as Attachment A. Staff has worked in collaboration with Pacific Power and third-party stakeholders, primarily representatives from NIPPC/REC, to hone the company's filing. NIPPC/REC filed joint comments to the docket. Staff agrees with many of the points made by NIPPC/REC; those contentions are folded into staff's analysis and recommendations above.

NIPPC/REC raised other topics and concerns in their comments.

- *Clarify that QFs in other states are eligible:* The joint parties request that Pacific Power revise tariff sheet QF.1 that could be ambiguous.<sup>15</sup> Staff agrees with the utility that the language is clear, and that other parts of the tariff contemplate the steps out-of-state QFs must take to sell under Pacific Power's PURPA tariff in Washington.<sup>16</sup>
- *Include all of legally enforceable obligation WAC language in tariff:* NIPPC/REC argue that Pacific Power's inclusion of some language from WAC 480-106-030(2)(b) might cause confusion by excluding other parts of the rule. Staff does not see any conflict between the WAC and Pacific Power's tariff language, and no party disputes that the full language of the rule applies whether or not some or all of that language is also in tariff.
- *Remove information requests in step 4 of contracting procedures:* The joint parties contend that the information Pacific Power may request in step 4 is duplicative of information required in step 2, and is overly detailed for small QFs pursuing a standard contract. Staff agrees with NIPPC/REC that the company cannot implicitly require a completed interconnection study, but staff is not convinced that the other information types listed in step 4 are duplicative or unnecessarily detailed.

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<sup>15</sup> Docket UE-190666, Comments on behalf of NIPPC and REC, December 9, 2019, page 15.

<sup>16</sup> Docket UE-190666, PacifiCorp's Reply Comments to Supplemental Filing, December 23, 2019, page 10.



- *Timing should be flexible, and requests for additional information should be made in good faith:* The joint parties note that negotiations and response windows are backstops, but that “there is no reason to wait until the 15<sup>th</sup> day just ‘to run out the clock[.]’”<sup>17</sup> NIPPC/REC identify the parts of the tariff permitting open-ended information requests as a way to delay the negotiation process. Staff connects these concerns about time-wasting with the core principle of working in good faith, which should be a fundamental driver for all parties. Neither NIPPC/REC nor staff suggest changes to the tariff which would further this principle.

### **Conclusion**

Staff recommends that the commission issue an order rejecting Schedule QF filed by Pacific Power & Light Company, and directing the utility to file a tariff consistent with PURPA, the commission’s Chapter 380-106 WAC and General Order R-597 by February 28, 2020, with PPA attachments submitted by May 29, 2020. Staff further recommends that the commission incorporate staff’s recommendations from this memo into its order, waive WAC 480-106-040(1)(b)(i) and direct Pacific Power & Light Company to calculate avoided costs of capacity starting in 2028 based on the 2017 Oregon solar RFP, and require the company to file a tariff revision that addresses the above items by February 28, 2020, and standard power purchase agreements as an attachment to this tariff by May 29, 2020.

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<sup>17</sup> Docket UE-190666, Comments on behalf of NIPPC and REC, December 9, 2019, page 17.